

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

LeRoy K. Wheeler,)	
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
State of North Dakota, Tim Schuetzle,)	
and Leann K. Bertsch,)	Case No. 1:07-cv-075
)	
Defendants.)	

On December 8, 2008, the plaintiff, LeRoy K. Wheeler (Wheeler), filed a Motion for Order for Production of Discovery Materials. The court denied the motion without prejudice as Wheeler had not served his discovery requests upon the Defendants.

On January 29, 2009, Wheeler filed a Motion for Order to Enforce Discovery Production. He complained that the Defendants had yet to respond to the discovery requests with which served them on January 5, 2009. He requested a hearing on this matter as well as an order from the court ordering the Defendants to respond to his requests.

The Defendants filed a response to Wheeler's motion on January 29, 2009. Therein, they asserted that Wheeler's motion was premature given that their responses to his request were not due until February 9, 2009.

There is no dispute that the Defendants were served with the discovery requests at issue on January 5, 2009. The Federal Rules of Civil Procedure provide that the Defendants have thirty from the date of service of the discovery requests in which to respond. See Fed. R. Civ. P. 33(b)(2) and 34(b)(2)(A). Further, Rule 6(d) provides the Defendants three additional days for mailing. Thus,

at first blush, the Defendants responses to Wheeler's requests were due on February 7, 2009. However, since February 7, 2009, was a Saturday, the Defendants were not actually due until Monday, February 9, 2009. Fed. R. Civ. P. 6(a)(3). Wheeler's motion was therefore filed prematurely.

Accordingly, the court **DENIES** Wheeler's Motion for Order for Production of Discovery Materials (Docket No. 65) as well as his request for a hearing without prejudice.

Dated this 12th day of February, 2009.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge